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CONTENTS • INHOUD

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
GENERAL NOTICE			
Transport, Department of			
<i>General Notice</i>			
950	Road Accident Fund Amendment Bill, 2014: Publication for comments	2	38173

GENERAL NOTICE**NOTICE 950 OF 2014****DEPARTMENT OF TRANSPORT**

**PUBLICATION FOR COMMENTS: ROAD ACCIDENT FUND AMENDMENT
BILL, 2014**

The Minister of Transport hereby publishes the above draft Bill and the Memorandum on the objects of the Bill for public comments. Interested persons are requested to submit written comments and inputs 30 days from the date of publication of this Bill in the gazette.

Comments should be directed to the Acting Director General, Department of Transport for attention of Mr John Motsatsing or Ngwako Thoka at:

The Department of Transport
Private Bag X193
PRETORIA
0001

E-Mail:	Motsatsj@dot.gov.za	ThokaN@dot.gov.za
Tel:	(012) 309 3574	(012) 309 3764
Fax:	(012) 309 3962	(012) 309 3962

REPUBLIC OF SOUTH AFRICA

**ROAD ACCIDENT FUND
AMENDEMENT BILL**

(As presented by the Minister of Transport)

(The English text is the official text of the Bill)

(Minister of Transport)

GENERAL EXPLANATORY NOTE:

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Words in bold type in square brackets indicate omissions from existing enactments

Words underlined with a solid line indicate insertions to the existing enactments

BILL

To amend the Road Accident Fund Act, 1996 so as to insert a new definition; to provide the Fund with the power to determine and amend the forms; to regulate the manner in which a final court order sounding in money against the Fund must be satisfied; to require the Minister to prescribe a list of injuries that are deemed serious; to authorise the Fund to offer a cost contribution with the offer of compensation; to require the Fund to pay compensation for accommodation, treatment and the rendering or supplying of a service, on a no-fault basis, for an initial period; to require the Fund to pay compensation for accommodation, treatment and the rendering or supplying of a service in accordance with the tariff prescribed by the Minister; to require the Fund to pay only specified funeral expenses, on a no-fault basis, limited to a maximum proven amount; to harmonise the prescription regime for claims; to require the Minister to make regulations to prescribe a list of injuries that will be deemed serious; the require the Minister to prescribe a single tariff; and to provide for matters connected therewith.

Be it enacted by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 56 of 1996

1. Section 1 of the Road Accident Fund Act, 1996 (Act No. 56 of 1996) (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "lift club" of the following definition:

"medical practitioner" means a person registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974);".

Amendment of section 4 of Act 56 of 1996

2. Section 4 of the principal Act is hereby amended by the insertion after paragraph (a) of the following paragraph:

"(aA) the determination, and amendment from time to time, of the forms required to be submitted in accordance with this Act, by publication in the Gazette;".

Amendment of section 15 of Act 56 of 1996

3. Section 15 of the principal Act is hereby amended by the addition of the following subsections:

"(4) If a final court order against the Fund for the payment of compensation is not satisfied by the Fund within 30 days of the date of the final court order; or if the payment of legal costs by the Fund pursuant to a court order and subsequent written agreement by the Fund and the third party of the amount of legal cost due is not paid by the Fund within 30 days of the date of the written agreement; or if the payment of legal cost by the Fund pursuant to a court order and subsequent taxation of the bill of costs is not paid within 30 days of the date of taxation, then the third party may pursue the process set out in this section.

(5) A third party pursuing payment must serve in terms of the applicable Rules of Court on the Chief Executive Officer of the Fund –

- (a) the final court order and a certificate by the registrar or clerk of the relevant court, certifying that no appeal, review or rescission proceedings are pending in respect of the court order; or
- (b) the court order and written agreement by the Fund to pay a specified amount in respect of legal costs; or
- (c) the court order and the allocator signed by the taxing master.

(6) The Fund must, within 30 days of the date of service of the documents provided for in subsection (5), ensure that –

- (a) payment is made to the third party; or
- (b) acceptable payment arrangements have been made with the third party.

(7) If the Fund fails to ensure that –

- (a) payment is made to the third party; or
- (b) acceptable payment arrangements have been made with the third party.

within the period specified in subsection (6), the registrar of the court concerned, as the case may be, must, upon written request of the third party issue a writ of execution or a warrant of execution in terms of the applicable Rules of Court against the movable property owned by the Fund.

(8) The sheriff shall, pursuant to the writ of execution or warrant of execution contemplated in subsection (7), attach but not remove the identified movable property.

(9) The Fund may within 30 days from the date of the attachment apply to the court concerned for a stay on grounds that the execution of the attached assets is not in the interest of justice.

(10) In the absence of an application by the Fund contemplated in subsection (9), the sheriff of the relevant court may, after the expiration of the period contemplated in subsection (9), remove and sell the attached movable property in accordance with the Rules of Court.

(11) No execution, attachment or like process, other than in accordance with the procedure contemplated in this section, may be issued against the Fund, for failure by the Fund to make payment contemplated in subsection (4)."

Amendment of section 17 of Act 56 of 1996

4. Section 17 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Fund or an agent shall—

- (a) subject to this Act, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of the owner or the driver thereof has been established;
- (b) subject to any regulation made under section 26, in the case of a claim for compensation under this section arising from the driving of a motor vehicle where the identity of neither the owner nor the driver thereof has been established,

be obliged to compensate any person (the third party) for any loss or damage which the third party has suffered as a result of any bodily injury to himself or herself or the death of or any bodily injury to any other person, caused by or arising from the

driving of a motor vehicle by any person at any place within the Republic, if the injury or death is due to the negligence or other wrongful act of the driver or of the owner of the motor vehicle or of his or her employee in the performance of the employee's duties as employee: Provided that the obligation of the Fund to compensate a third party for: **[non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum]**.

- (i) non-pecuniary loss shall be limited to compensation for a serious injury as contemplated in subsection (1A) and shall be paid by way of a lump sum;
- (ii) the cost of accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods or services, provided within the 30 day period following immediately after the cause of action arising, shall be irrespective of the negligence or other wrongful act of any person; and
- (iii) loss or damage specified in subsection 18(4) shall be irrespective of the negligence or other wrongful act of any person.”;

(b) by the substitution for subsection (1A) of the following subsection:

“(1A) (a) Subject to paragraph (c), [A]assessment of a serious injury shall be based on a prescribed method adopted after consultation with medical service providers and shall be reasonable in ensuring that injuries are assessed in relation to the circumstances of the third party.

(b) The assessment shall be carried out by a medical practitioner **[registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974)]**.

(c) The Minister shall prescribe a list of injuries that are deemed serious.”;

- (c) by the insertion after subsection (1A) of the following subsection:
- “(1B) The Fund may offer the third party a cost contribution with the offer of compensation.”;
- (d) by the substitution in subsection (4B) for paragraph (a) of the following paragraph:
- “(a) The liability of the Fund or an agent regarding any tariff contemplated in subsections (4) (a), (5) and (6) shall be based on the tariff[s for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003), and shall be] prescribed after consultation with the Minister of Health.”;
- (e) by the substitution in subsection (4B) for paragraph (b) of the following paragraph:
- “(b) The tariff [for emergency medical treatment provided by a health care provider contemplated in the National Health Act, 2003—
- (i) shall be negotiated between the Fund and such health care providers; and
- (ii) shall be reasonable taking into account factors such as the cost of such treatment and the ability of the Fund to pay] referred to in paragraph (a) shall be adjusted annually by the Fund, by notice in the Gazette, in order to counter the effect of inflation.”; and
- (f) by the deletion in subsection (4B) of paragraph (c).

Amendment of section 18 of Act 56 of 1996

5. Section 18 of the principal Act is hereby amended –

- (a) by the substitution for subsection (4) of the following subsection:

“(4) The liability of the Fund or an agent to compensate a third party for any loss or damage contemplated in section 17 which is the result of the death of any person shall in respect of funeral expenses be calculated to an amount not exceeding R 10 000.00 and shall be limited to the **[necessary actual]** costs in respect of [to cremate the deceased or to inter him or her in a grave] –

(a) transporting the body;

(b) storing the body;

(c) embalming the body;

(d) cremating the body;

(e) the coffin or casket;

(f) the grave;

(g) equipment hired to lower the coffin into the grave; and

(h) the funeral undertaker fee.”; and

(b) by the addition after subsection (4) of the following subsection:

“(5) The Fund shall, by notice in the *Gazette*, adjust the amount referred to in subsection (4) annually, in order to counter the effect of inflation.”.

Amendment of section 22 of Act 56 of 1996

6. Section 22 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) When, as a result of the driving of a motor vehicle, any person other than the driver of that motor vehicle has been killed or injured, the owner and the driver, if the driver is not the owner, of the motor vehicle shall, if reasonably possible within 14 days after the occurrence, furnish the Fund, on the **[prescribed]** form determined by the Fund, with particulars of the occurrence

together with the prescribed statements, and the Fund shall furnish such information to the agent who in terms of section 8 is responsible for any claim arising from the occurrence.”.

Amendment of section 23 of Act 56 of 1996

7. Section 23 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent ~~in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established,~~ shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.”.

Amendment of section 24 of Act 56 of 1996

8. Section 24 of the principal Act is hereby amended by –

- (a) by the substitution for paragraph (a) in subsection (1) of the following paragraph:

“(a) be set out in the **[prescribed]** form determined by the Fund, which shall be completed in all its particulars;”;

- (b) by the substitution for paragraph (a) in subsection (2) of the following paragraph:

“(a) The medical report shall be completed on the **[prescribed]** form determined by the Fund by the medical practitioner who treated the deceased or injured person for the bodily injuries sustained in the accident from which the claim arises, or by the superintendent (or

his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that, if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim concerned may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of the death or the nature and treatment of the bodily injuries in respect of which the claim is made.”; and

(c) by the substitution for subsection (3) of the following subsection:

“(3) A claim by a supplier for the payment of expenses in terms of section 17 (5) shall be in the **[prescribed]** form determined by the Fund, and the provisions of this section shall apply *mutatis mutandis* in respect of the completion of such form.”.

Amendment of section 26 of Act 56 of 1996

9. Section 26 of the principal Act is hereby amended by –

(a) the insertion in subsection (1A) after paragraph (a) of the following paragraph:

“(aA) injuries which are, for the purpose of section 17, deemed serious;”; and

(b) the insertion in subsection (1A) after paragraph (b) of the following paragraph:

“(bA) the tariff contemplated in subsection 17(4B);”.

Savings

10. Any claim for compensation under section 17 of the principal Act in respect of which the cause of action arose prior to the date on which this Act takes effect must be dealt with as if this Act had not taken effect.

Short title and commencement

11. This Act is called the Road Accident Fund Amendment Act, 2014 and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE ROAD ACCIDENT FUND AMENDMENT BILL, 2014

1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK

- 1.1 The Road Accident Fund Act, 1996 (Act No. 56 of 1996) (the Act), provides for the payment of compensation for loss or damage wrongfully caused by the driving of motor vehicles.
- 1.2 The Act was amended by the Road Accident Fund Amendment Act, 2005 (Act No. 19 of 2005) (the Amendment Act), which came into operation on 1 August 2008. The objects of the Amendment Act were to improve the governance of the Fund, provide for a more equitable, fair and transparent compensation system, whilst limiting the liability of the Fund.
- 1.3 One of the amendments introduced by the Amendment Act is the regulation of the Fund's obligation to compensate a claimant for hospital or medical expenses in accordance with one of two tariffs. One tariff provides for emergency medical treatment and was negotiated with health care providers (the Emergency Treatment Tariff). The other tariff was based on the tariffs for health services provided by public health establishments contemplated in the National Health Act, 2003 (Act No. 61 of 2003) (the Non-Emergency Treatment Tariff).

The Non-Emergency Treatment Tariff was successfully challenged by the Law Society of South Africa and others and was declared invalid by the Constitutional Court, on 25 November 2010, in the case of *Law Society of South Africa & others v Minister for Transport & another [2010] JOL 26483 (CC)*. The Constitutional Court ordered that:

"Until the Minister for Transport prescribes a new tariff for health services in terms of section 17(4B)(a) of the Road Accident Fund Act, a third party who has sustained bodily injury and whom the Road Accident Fund is obliged to compensate as contemplated in sections 17(4)(a), 17(5) and (6) of the Road Accident Fund Act, is entitled to compensation or health services as if he or she had been injured before the Road Accident Fund Amendment Act, 19 of 2005 came into operation."

The Emergency Medical Tariff is currently still in force. No tariff is in force for medical treatment that is not emergency medical treatment. The application of the Emergency Medical Tariff, in the absence of the Non-Emergency Tariff, creates uncertainty and gives rise to disputes. The administration of a two-tariff system further adds administrative complexity to the system.

- 1.4 The Department of Transport, on 8 February 2013, published the Road Accident Benefit Scheme Bill, 2013 for comment. The envisaged new no-fault benefit scheme will replace the existing fault-based scheme administered by the Road Accident Fund. Upon commencement of the new no-fault scheme the Road Accident Fund will cease to exist and all its assets, liabilities, rights and obligations, existing as well as accruing, will devolve upon the new Administrator. The new Administrator will therefore also continue to administer claims under the Act, which claims arose before the commencement of the new no-fault scheme, and which claims may in certain instances be lodged up to 18 years, and even later, after the cause of action arose.

- 1.5 Consequently the Act will, irrespective of the establishment of the new no-fault scheme, continue to have effect for several years.

2. OBJECTS OF THE BILL

The object of the Bill is to amend the Road Accident Fund Act, 1996 so as to create a scheme that facilitates responsible financial management and enables the efficient and cost-effective delivery of compensation.

3. SUMMARY OF THE BILL

- 3.1 The Bill seeks to introduce a definition for "medical practitioner" to make clear that only a medical practitioner may complete the medical report contemplated in section 24(2) of the Act.
- 3.2 The Bill seeks to authorise the Fund to determine and amend the forms required to be submitted by the Act.
- 3.3 The Bill seeks to introduce a provision, comparable to section 3 of the State Liability Act, 1957, to regulate the process of managing final court orders sounding in money, which will allow the Fund time to perform the necessary internal due diligence before payment is made.
- 3.4 The position under the current Act is for all injuries to be assessed in accordance with the prescribed assessment method, if claimant intends to claim non-pecuniary loss. The Bill seeks to authorise the Minister to prescribe a list of injuries that would automatically be deemed serious, for purposes of obligating the Fund to compensate the claimant for non-pecuniary loss. The introduction of the proposed list will expedite claim administration in respect of claims pertaining to alleged serious injuries, and will also reduce unnecessary costs incurred in respect of assessments conducted under the prescribed assessment method.
- 3.5 The Amendment Act repealed, as a cost saving for the Fund, subsection 17(2) of the Act, which provided that the Fund was liable for claimants' legal cost. However, claimants are now pursuing litigation with the specific intent to recover their legal costs. The Bill seeks to authorise the Fund to offer a cost contribution to the claimant with the offer of compensation, thereby reducing the incentive for the claimant to litigate to recover legal costs from the Fund.
- 3.6 The Bill seeks to introduce a specified period, following immediately after the accident, during which claimants will be able to access medical and related treatment for injuries sustained in the accident on a no-fault basis. This amendment seeks to provide cover to all persons injured in road accidents, to ensure that timely medical treatment is available during the initial critical period following immediately after the road accident. Timely treatment of injuries results in a better overall outcome for the injured, and reduced liability for the Fund in the long-term.
- 3.7 The Bill seeks to introduce a single medical tariff.

- 3.8 The Bill seeks to limit the Fund's liability to compensate funeral expenses by specifying the type of expenses the Fund is liable to compensate, and by introducing an overall limit of the Fund's. The Bill further seeks to obligate the Fund to compensate funeral expenses on a no-fault basis. The amendment will expedite claim processing, reduce disputes pertaining to what expenses are compensated by the Fund, and will also ensure improved equity and fairness in that the rich will not recover disproportionate compensation at the expense of the poor.
- 3.9 Section 23 of the Act provides for a prescription regime that only applies to claims where the identity of the driver or owner of the vehicle that caused the accident has been established. So called "hit-and-run" claims are subject to a less generous prescribed prescription regime. A number of legal challenges are currently pending where the differentiation between the two classes of claims are at issue. The Bill seeks to harmonise the prescription regime so that prescription of all claims are dealt with in terms of section 23 of the Act.
- 3.10 The envisaged Road Accident Fund Amendment Act, 2014, will not apply to claims in respect of which the cause of action arose prior to the commencement of that Act. It would be unfair, and arguably unconstitutional, to accord retrospectivity to the Act. Thus, the Act will only apply to claims that arose after the commencement of the Act.

4. PARTIES CONSULTED

[A notice and comment process will be followed. In addition DoT may consult certain parties directly. Details will follow]

5. FINANCIAL IMPLICATIONS FOR THE STATE

[State Law Advisor to advise]

6. IMPLICATIONS FOR PROVINCES

[State Law Advisor to advise]

7. PARLIAMENTARY PROCEDURE

[State Law Advisor to advise]

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